

The Senate Public Safety Committee offered the following substitute to SB 318:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions for law enforcement officers and agencies, so as to require an affidavit to accompany complaints in certain civil actions for damages against law enforcement officers; to prohibit the settling of a claim for damages against a law enforcement officer without the approval of such officer; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions for law enforcement officers and agencies, is amended by adding a new Code section to read as follows:

"35-1-16.

(a) In any action for damages brought against a certified law enforcement officer employed by a law enforcement agency, based, in whole or in part, on the alleged performance or nonperformance of a discretionary act requiring the exercise of personal deliberation and judgment by such officer acting within the scope of his or her official duties, the plaintiff shall be required to file with the complaint an affidavit of an expert competent to testify. The affidavit shall set forth specifically at least one discretionary act or omission claimed to exist and the factual basis for each such claim. This subsection shall not apply to any action that does not include a claim for damages based upon the performance or nonperformance of a discretionary act, including a claim based on the performance or nonperformance of a ministerial act or a claim based on the commission of a willful or wanton act committed with malice or intent to harm.

(b) The contemporaneous affidavit filing requirement pursuant to subsection (a) of this Code section shall not apply to any case in which the period of limitation will expire or in which there is a good faith basis to believe it will expire on any claim stated in the

27 complaint within ten days of the date of filing the complaint and, because of time
28 constraints, the plaintiff has alleged that an affidavit of an expert could not be prepared.
29 In such cases, if the attorney for the plaintiff files with the complaint an affidavit in which
30 the attorney swears or affirms that his or her law firm was not retained by the plaintiff more
31 than 90 days prior to the expiration of the period of limitation on the plaintiff's claim or
32 claims, the plaintiff shall have 45 days after the filing of the complaint to supplement the
33 pleadings with the affidavit. The trial court shall not extend such time for any reason
34 without consent of all parties. If either affidavit is not filed within the periods specified in
35 this Code section, or it is determined that the law firm of the attorney who filed the
36 affidavit permitted in lieu of the contemporaneous filing of an expert affidavit or any
37 attorney who appears on the pleadings was retained by the plaintiff more than 90 days prior
38 to the expiration of the period of limitation, the complaint shall be dismissed for failure to
39 state a claim.

40 (c) This Code section shall not be construed to extend any applicable period of limitation,
41 except that if the affidavits are filed within the periods specified in this Code section, the
42 filing of the affidavit of an expert after the expiration of the period of limitations shall be
43 considered timely and shall provide no basis for a statute of limitations defense.

44 (d) If a complaint required to have an affidavit pursuant to subsection (a) of this Code
45 section is filed without the contemporaneous filing of an affidavit as permitted by
46 subsection (b) of this Code section, the defendant shall not be required to file an answer to
47 the complaint until 30 days after the filing of the affidavit of an expert, and no discovery
48 shall take place until after the filing of the answer.

49 (e) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom
50 it pertains alleges, with specificity, by motion to dismiss filed on or before the close of
51 discovery, that said affidavit is defective, the plaintiff's complaint shall be subject to
52 dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect
53 by amendment pursuant to Code Section 9-11-15 within 30 days of service of the motion
54 alleging that the affidavit is defective. The trial court may, in the exercise of its discretion,
55 extend the time for filing said amendment or response to the motion, or both, as it shall
56 determine justice requires.

57 (f) If a plaintiff fails to file an affidavit as required by this Code section and the defendant
58 raises the failure to file such an affidavit by motion to dismiss filed contemporaneously
59 with its initial responsive pleading, such complaint shall not be subject to the renewal
60 provisions of Code Section 9-2-61 after the expiration of the applicable period of
61 limitation, unless a court determines that the plaintiff had the requisite affidavit within the
62 time required by this Code section and the failure to file the affidavit was the result of a
63 mistake.

- 64 (g) No action for damages brought against a certified law enforcement officer may be
65 settled without the written consent of such officer.
- 66 (h) This Code section shall not apply to an action filed in response to an employment
67 decision made by a certified peace officer or his or her employing agency."

68 **SECTION 2.**

69 This Act shall become effective on July 1, 2010, and shall apply to all causes of action filed
70 on or after such date.

71 **SECTION 3.**

72 All laws and parts of laws in conflict with this Act are repealed.